ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20054

In the Matter of	)	
	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions in the	)	
Telecommunications Act of 1996	)	

COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

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SUMMARY

The Commission's actions thus far on number administration, while advocating the correct policies, do not yet satisfy its Congressional responsibilities under Section 251(e)(1) of the Act that it "create or designate one or more impartial entities" to handle number administration. While the Commission has stated its intent to do so, at present the ILECs continue to control the issuance of NXXs, and continue to challenge the Commission's policies on the use of "overlay" NPAs. The Commission should clearly assert its continuing jurisdiction over national numbering policy issues, promptly appoint the members of the North American Numbering Council, and provide a fixed and rapid deadline for them to select a North American Numbering Administrator.

TCG also recommends that the Commission promulgate appropriate regulations to ensure that companies abide by their obligations to provide nondiscriminatory access to poles, ducts, conduits and rights of way. TCG has experienced numerous instances of ILECs refusing to make such facilities available on a fair and reasonable basis, and the Commission's firm enunciation of proper standards could help avoid such situations in the future. The Commission should also adopt appropriate regulations on the exchange of technical information. and implement realistic and fair standards for the exchange of technical information.

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Teleport Communications Group Inc. ("TCG") hereby submits its second set of Comments on the Commission's Notice of Proposed Rulemaking[1] regarding the implementation of the Telecommunications Act of 1996 ("1996 Act").[2]

I. INTRODUCTION.

TCG, "The *Other* Local Phone Company,"℠ is the nation's largest and most experienced competitive local carrier. In its initial comments on May 16, 1996, TCG explained that the Commission needed to establish a firm set of "preferred outcomes" or entitlements that would assure new entrants of the minimum requirements they need to be successful competitors. In these second comments,

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1. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-182, released April 19, 1996 ("NPRM").

2. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

TCG explains the need for Commission action on the several issues on which comments are now sought.

II. NUMBER ADMINISTRATION. (NPRM ¶¶ 250-259)

A. Has the Commission Satisfied the 1996 Act? (NPRM ¶ 252)

The Commission tentatively concludes that it has satisfied the requirements under Section 251(e)(1) of the Act that it "create or designate one or more impartial entities" to handle number administration.[3] It also asks whether it should temporarily continue the status quo.[4]

The plain language of the statute speaks to the creation of an entity that can "make such numbers available on an equitable basis."[5] Nowhere are NXXs assigned today by an impartial entity. These numbers are assigned in each states by the dominant ILEC, direct competitors of the carriers that seek NXX assignments.

Under the current structure, TCG continues to encounter difficulties in obtaining numbers neutrally assigned by its competitors. For example, in April 1996 TCG was refused NXX assignments by Bell Atlantic-New Jersey, even though TCG holds switched local business (Centrex) authority, as well as interstate switched access authority, in that jurisdiction. After an exchange of

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3. *See* NPRM at ¶¶ 250-253.

4. *Id.* at ¶ 258.

5. 1996 Act, § 251(e)(1).

correspondence between TCG and Bell Atlantic-New Jersey, the RBOC reversed course and provided TCG with the requested numbers. TCG was forced, however, to expend time and resources to obtain its numbers -- a situation that could have been avoided had a neutral, third party administrator been in place.[6]

At present, the Commission's decisions on the North American Numbering Plan ("NANP") are not a reality. There is no North American Numbering Council ("NANC"), although nominations have been received. There is no impartial North American Numbering Administrator ("NANA"). Before the Commission can conclude that it has satisfied the requirements of the Act, it must have both of these organizations in place and functioning, replacing the ILEC's control of the process.

TCG is also concerned that, if the Commission adopts its tentative conclusion that it has satisfied its statutory obligations, it may create a dangerous precedent. The Commission has as yet only promised to create these organizations but has not named a single member, and not a single NXX has yet been impartially administered. If such modest progress is treated as "compliance" with the 1996 Act, an ILEC likewise may claim that its "plan" to comply with the 1996 Act is tantamount to actual compliance.

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6. TCG had earlier been forced to bring Declaratory Ruling petitions to the Commission against Southwestern Bell and NYNEX before, under threat of an adverse Commission order, the RBOCs eventually relented and assigned NXXs to TCG.

Rather than establishing such a precedent, TCG recommends that the Commission reverse its tentative conclusion, appoint the members of the NANC, and give them a firm deadline by which to select and have operational a NANA. Once these tasks are accomplished, the Commission can consider that it has completed its statutory duty. Until then, however, the ILECs continue to control the process, the potential for abuse is undiminished, and the statutory mandate to have an entity that "makes such numbers available" has not been satisfied.

B. Should the Commission Retain its Authority over Numbering Issues? (NPRM ¶¶ 254-258)

The Commission asks what role it should assume in number administration versus what it should delegate to the states. TCG agrees with the Commission that the state commissions have a legitimate right, and are in the best position to decide, on the physical boundaries of area codes.[7] That responsibility should be left to the states. The Commission, however, should retain the policy making responsibility for defining the appropriate terms under which area code changes can be made. In the Ameritech Order,[8] the Commission has set the initial framework for such policy by declaring that certain area code assignments are not

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7. *Id.* at ¶ 256

8. *See* Proposed 708 Relief Plan and 630 Numbering Plan, 10 FCC Rcd 4596 (1995) ("Ameritech Order"). (The Commission rejected Ameritech's overlay plan in which it proposed to have paging and cellular licensees surrender their numbers in the existing area code. These licensees would be assigned numbers in the new area code while wireline carriers would receive the surrendered and remaining numbers in the existing area code.)

appropriate.[9] TCG shares the Commission's concerns that "overlay" area codes potentially represent a serious anticompetitive threat to the development of local exchange service competition, and would therefore be inconsistent with the Section 251(e) requirement that numbers be administered on an equitable basis.[10]

Even though the Commission established some numbering guidelines in its Ameritech Order, ILECs continue to propose plans inconsistent with these policies. The California PUC recently rejected an overlay plan proposed by Pacific Bell, the

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9. The Commission issued the following guidelines to govern future number administration. The administration of numbers: (1) must seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications services providers; (2) should not unduly favor or disadvantage any particular industry segment or group of consumers; and (3) should not unduly favor one technology over another.10 FCC at 4604.

10. Customers or competitors receiving telephone numbers from overlay area codes are disadvantaged for several reasons. First, overlay numbers are unfamiliar and potential callers may be reluctant to call them for fear they will incur long distance charges. Second, overlay numbers cannot be dialed directly (using 7 digits) from the existing area code, nor can overlay callers dial into the familiar area code using 7 digits. Third, overlay plans disproportionately require competitors -- but not ILECs -- to use overlay area code numbers, thereby hindering entry into the local communications services market. Fourth, existing area codes have high "name recognition" which creates a distinct market value, and thus subscribers will are unlikely to take service from a competitor if it means they must give up a number in the familiar area code. Fifth, implementation of new area codes requires programming work in PBXs across the country, and if the new overlay code is only used by a few customers of a new entrant there is a much higher risk that this programming work will be ignored by PBX users, so that the competitor's customers could not be called by users of those PBXs. In the final analysis, only area code splits, where all customers in a particular geographic area receive a new NPA, avoids the inequitable impact of overlay area codes.

California Code Administrator, for the 310 NPA (Los Angeles area).[11] Despite the 310 NPA finding, which was "based upon anticompetitive criteria . . . not unique to the 310 area code relief plan,[12] Pacific Bell has essentially ignored the 310 Order and simply redirected its efforts to implement overlay plans in nearby area codes.[13] The California PUC is currently reviewing whether such additional overlays are prohibited pursuant to the terms of the 310 NPA decision.[14] The Public Utility Commission of Texas also has recently considered an area code overlay proposal by Southwestern Bell Telephone Company (SWB") for Dallas and Houston, and has recently requested that the Federal Communications Commission

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11. California PUC Decision 95-08-052 at 55, 57. (The PUC found that "[m]andatory 1+10-digit dialing for all calls should be a conditions of implementing an overlay" and that "implementation of at least interim SPLNP (Service Provider Local Number Portability) is a necessary condition to mitigate the anticompetitive effects of an overlay.")

12. Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, R.95-04-043, ALJ Ruling (April 2, 1996).

13. The California PUC has relief plans before it for the 415 NPA (San Francisco area) and the 916 NPA (Sacramento area).

14. *See* Petition of MCI Telecommunications Corporation for an Investigation of the Practices of Southwestern Bell Telephone Company Regarding the Exhaustion of Telephone Numbers in The 214 Numbering Plan Area and Request for a Case and Desist Order Against Southwestern Bell Telephone Company, Consolidated Docket No. 14447, Order on Rehearing (April 29, 1996) (The PUC found (at p. 21) in favor of an overlay even though it concluded that the overlay plan would have benefitted SWB by permitting it "to obtain a competitive advantage over new entrants due to the existing base of telephone numbers that [it] may rely upon. This result would contravene the . . . policy of encouraging competition within the telecommunications industry.")

address its proposal to implement a wireless-only overlay plan notwithstanding the FCC's clear directives in the Ameritech Order.[15]

As the Commission has observed, "[s]o long as the LECs perform the functions of CO code administration, the suspicion of anticompetitive and discriminatory treatment in CO code assignment and area code relief continues."[16] Accordingly, TCG recommends that the Commission retain jurisdiction over the national standards for the introduction of new area codes. To end the costly, repetitive, and anticompetitive efforts by the ILECs before the state commissions, the Commission should declare that overlay plans do not satisfy its number administration guidelines and do not meet the §251(e) requirement that numbers be equitably administered. In the future, when the NANC and NANA are operational, the Commission should consider delegating certain area code relief planning responsibilities to those organizations, to ensure that these decisions are made impartially.

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15. *See* Public Utility Commission of Texas Petition for Expedited Declaratory Ruling, in re Area Code Relief Plan for Dallas and Houston Ordered by the Public Utility Commission of Texas, filed with the FCC on May 9, 1996.

16. Administration of The North American Numbering Plan, 11 FCC Rcd 2588, 2621 (1995). The Commission has concluded that LEC administration of CO codes should end.

III. NONDISCRIMINATORY ACCESS TO POLES, DUCTS, CONDUITS AND RIGHTS OF WAY (NPRM ¶¶ 222-225).

The Pole Attachments Act has been amended by the recent passage of the 1996 Act. The amendment requires that all utilities, including local exchange carriers, provide nondiscriminatory access to their poles, ducts, conduits, and rights-of-way;[17] provides a rate formula to apply in the event the parties are unable to resolve disputes related to pole attachment charges;[18] and requires pole owners to provide written notification to users when they plan to modify or make alterations to the poles, ducts, conduits or rights-of-way.[19] Users may then modify or add to their existing attachments at the same time on a proportionate cost-sharing basis.

The FCC is required to promulgate regulations implementing the amendments to the Pole Attachments Act. The first issue that must be determined by the FCC is what should constitute nondiscriminatory access to poles, ducts, conduits, and rights-of-way. For example, a utility providing electric service is afforded an exception based on insufficient capacity, safety reasons, reliability, or generally applicable engineering purposes.[20] There is a risk that utilities may abuse this exception and prohibit access based on questionable

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17. 1996 Act, §224(a)(1).

18. The FCC has two years to prescribe rules implementing the rate formula. The rate would become effective five years after the date of enactment of the act. During the five year interim period, parties would be allowed to attach at the current cable television rate. 1996 Act §§224(e)(1) and (4).

19. 1996 Act, §224(h).

20. 1996 Act, §252(f)(2).

capacity or safety justifications. To limit this risk, the FCC must establish national, uniform standards for determining standard pole capacity. This places the burden on the utility to provide evidence showing that the particular pole is at full capacity based on this standard, thus protecting against discriminatory access. Similarly, basic safety, reliability, and engineering standards should be specified to avoid anticompetitive abuses of that exception. Further, the pole access must be granted in a timely manner — an application should be processed and physical access provided in thirty days or less.[21]

An applicant should be able to appeal any denial of access to a pole, duct, conduit or right-of-way under fair, reasonable, and rapid procedures. The entire appeals process and determination must occur within a relatively short time frame such as thirty days, so that a applicant's business is not jeopardized due to unreasonable delays.

Additionally, the Act grants the FCC enforcement powers. The Commission's rules should clarify that an applicant may opt for federal jurisdiction for enforcement and appeal of any matter related to a pole attachment issue as well as obtain injunctive relief in any federal court. The implementation of general industry standards, justification of denial of access based on the industry standards, and a timely appeal process with federal jurisdiction is the only way to insure nondiscriminatory access.

The FCC must also implement the requirements regarding modifications or alterations of poles, duct, conduit, or rights-of-way by an owner. The 1996 Act requires an owner to

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21. TCG has been burdened by ILECs who have taken extraordinary amounts of time to process pole attachment requests -- knowing that every day they delay in providing pole access is another day in which their competitors will be unable to extend their networks to serve new users or new communities.

provide written notification to a user in the event the owner intends to modify or alter a pole, duct, conduit, or right-of-way.[22] The user may then modify or add to its attachment and pay a proportionate share of the costs incurred by the owner. Regulations are needed to ensure that users are given adequate notice of such modification or alteration and given adequate response time for determining their economic and business requirements; owners are prohibited from making unnecessary or unduly burdensome alterations or modifications; and only costs associated with the user's use of the pole, duct, conduit, or right-of-way should be included in the users' proportionate share of the costs.

A reasonable notice period for any modification or alteration should be no less than twelve months. This time period will enable a user to determine its future business and economic needs and if it wants to make any additions or alterations. Interruption in the users' telecommunications operations must not be permitted should the owner or another user want to make any alterations or modifications to a pole, duct, conduit, or right-of-way. Further, an owner should be prohibited from making any modifications or alterations which are arbitrary, unnecessary, or unduly burdensome to users. An owner should also be prohibited from making modifications or alterations to a particular pole, duct, conduit or right-of-way more than one time in any two year period.

A user should have the ability to appeal the need for any modifications or alterations as being arbitrary, unnecessary, or unduly burdensome and which would effect its

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22. 1996 Act, §252(h).

telecommunications operations and service provided to its customers. Again, federal jurisdiction for all pole attachment matters will help avoid unreasonable delays in resolution.

Finally, a user should only be required to pay a proportionate share of the costs incurred by the owner that are *directly related* to any modification or addition requested by that user. It is clear from the Act that the owner is required to pay for any modification or alteration for its benefit. Only if a user requests a modification or addition should the user pay its pro rata share of the cost of that modification or alteration requested.

IV. PUBLIC NOTICE OF CHANGES (NPRM ¶¶189-194).

The Commission poses a number of questions regarding the ILEC's obligations under the 1996 Act to "provide reasonable public notice" of changes of information necessary for call routing.[23] TCG agrees with the Commission's tentative conclusion that existing industry organizations such as the NOF or ICCF are appropriate vehicles for the dissemination of such information. TCG believes that the Commission should require the ILECs to disseminate information on a timely basis, prohibit them from distributing such information to their long distance or equipments affiliates prior to public dissemination, and use the Computer III guidelines and timetables to govern the distribution of such information.

With respect to the Commission's questions about national and network security and proprietary interests of LECs, TCG recommends that the industry be directed to develop appropriate standards for such purposes. Certainly network and national security issues deserve the highest attention. TCG is concerned,

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23. 1996 Act, §251(c)(5); NPRM ¶¶ 189-194.

however, that claims of "proprietary interests" could be used as a means to keep essential network interconnection and routing information from the hands of competitors. Accordingly, the Commission should require that any proprietary information that falls within Section 251(c)(5) must be made available to any party that signs an appropriate proprietary information agreement as prescribed by the Commission.

V. CONCLUSION

TCG submits that the Commission should clearly assert its jurisdiction over national numbering policy issues, promptly appoint the members of the NANC and provide a fixed and rapid deadline for them to select a NANA, prescribe appropriate regulations to implement the modifications to the pole attachment act, and implement realistic and fair standards for the exchange of technical information.

Respectfully submitted,

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